

Statement of Emergency
40 KAR 1:040E

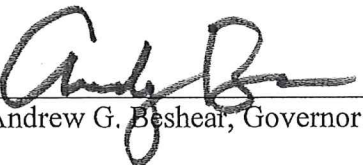
FILED WITH LRC TIME: <u>11:49 AM</u> JUN 28 2021 Emily B Caudill REGULATIONS COMPILER

During its 2021 regular session, the General Assembly passed House Bill 312, which amended provisions of the Kentucky Open Records Act. *See* 2021 Ky. Law CH. 160. House Bill 312 will become effective on June 29, 2021. *See* OAG 21-02.

Effective June 29, 2021, House Bill 312 amends KRS 61.826 to require the Attorney General to publish a statewide standardized form that may be used to request to inspect public records under the Kentucky Open Records Act. KRS 61.826(4) (effective June 29, 2021). The statute further requires the Attorney General to promulgate an administrative regulation to incorporate by reference the standardized form. Effective June 29, 2021, every public agency subject to the Act must accept a request to inspect public records that has been submitted by a Kentucky resident using this form. In addition, each public agency must display the form in a prominent location accessible to the public, including on its website.

This emergency regulation is necessary to meet a deadline for the promulgation of an administrative regulation that is established by state statute KRS 13A.190(1)(a)3. Because House Bill 312 is effective June 29, 2021, this emergency regulation will ensure that on that date, each public agency subject to the Act may comply with the amended provisions of KRS 61.826 and that the public may submit requests to inspect public records using the standardized form beginning on that date.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.



Andrew G. Beshear, Governor



Daniel Cameron, Attorney General

1 DEPARTMENT OF LAW

2 Civil Division

3 Office of Civil and Environmental Law

4 Open Records and Meetings Division

5 (New Emergency Administrative Regulation)

6 40 KAR 1:040E. Standardized Open Records Request Form.

7 RELATES TO: KRS 61.876(4)

8 STATUTORY AUTHORITY: KRS 61.876(4)

9 NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation
10 is necessary to comply with KRS 61.876(4), which requires the Attorney General to
11 promulgate by regulation a standardized form that may be used to request to inspect public
12 records under the Kentucky Open Records Act.

13 Section 1. Incorporation by Reference. (1) “Standardized Open Records Request
14 Form”, OAG-1, June 2021, is incorporated by reference.

15 (2) This material may be inspected, copied, or obtained, subject to applicable
16 copyright law, at the Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort,
17 Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. The material incorporated
18 by reference is also available on the Attorney General’s Website at
19 https://ag.ky.gov/Documents/2021_Standardized_Open_Records_Request_Form_V3.pdf.

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READ AND APPROVED:

A handwritten signature in black ink, appearing to be 'D. Cameron', written over a horizontal line.

Daniel Cameron, Attorney General
Department of Law

6-23-21

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held at 10:00 A.M. on August 22, 2021 at Capital Complex East, Conference Room A, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on August 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact person: Marc Manley, Division Director, Open Records and Meetings Division, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky, 40601. (502) 696-5478. Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

40 KAR 1:040E

Contact person: Marc Manley, 502-696-5478, Marc.Manley@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: Pursuant to House Bill 312 § 3(4), this administrative regulation creates and incorporates by reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because, under House Bill 312 § 3(4), the General Assembly has required the Attorney General to promulgate reference a standardized form that may be used to request public records from a public agency under the Kentucky Open Records Act.

(c) How this administrative regulation conforms to the content of the authorizing statutes: House Bill 312 § 3(4) requires the Attorney General to promulgate this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist public agencies across the Commonwealth because every public agency must accept a request to inspect public records that is submitted on this form. In addition, under House Bill 312 § 3(2), each public agency must display the form in a prominent location accessible to the public, including on its Website. This administrative regulation will ensure that each public agency can meet that statutory requirement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every "public agency," as the term is defined in KRS 61.870(1), is affected by this administrative regulation. Specifically, each public agency must accept a request to inspect public records that is submitted using the standardized form that is incorporated by reference by this administrative regulation.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Although no regulated entity must take any specific actions to comply with this administrative regulation, House Bill 312, effective June 29, 2021, requires that each public agency subject to the Act "shall accept" any request submitted using the standardized form that is incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: It is neither intended nor anticipated that any public agency will incur any cost as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: A public agency can be assured that any request to inspect records that is submitted on this form is a request that meets the basic requirements of the Open Records Act.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: Not applicable.

(a) Initially: Not applicable.

(b) On a continuing basis: Not applicable.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees or additional funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees.

(9) TIERING: Is tiering applied? Explain why or why not. Because House Bill 312 requires that the Attorney General develop one standardized form that the public may use to submit open records requests, no tiering is required.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

40 KAR 1:040E

Contact person: Marc Manley, 502-696-5478, Marc.Manley@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All public agencies subject to the Kentucky Open Records Act will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.876(4), as amended by House Bill 312, requires and authorizes the action taken by the administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(4) Revenues (+/-): Not applicable.

(5) Expenditures (+/-): Not applicable.

(6) Other Explanation: Not applicable.

Request to Inspect Public Records

Pursuant to the Kentucky Open Records Act ("the Act"), KRS 61.870 *et seq.*, the undersigned requests to inspect the public records which are described below.

Requester's contact information.

Name: [REDACTED]

Mailing Address: [REDACTED]

E-mail Address (if applicable): [REDACTED]

Records to be inspected:

[REDACTED]

Statement regarding the use of public records. KRS 61.870(4) defines "commercial purpose" as "the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee." However, "commercial purpose" does not include the publication or related use of the public record by a newspaper or periodical, by a radio or television station in its news or informational program, or by use in the prosecution or defense of litigation by the parties to such an action or their attorney.

This request is (choose one):

- ☐ NOT for a commercial purpose; or
☐ FOR a commercial purpose.

Statement regarding residency. I further state that I am a resident of Kentucky because I am (please check one):

- ☐ An individual residing in the Commonwealth; or
☐ A domestic business entity with a location in the Commonwealth; or
☐ A foreign business entity registered with the Kentucky Secretary of State; or
☐ An individual that is employed and works at a location within the Commonwealth; or
☐ An individual or business entity that owns real property within the Commonwealth; or
☐ An individual or business entity that has been authorized to act on behalf of an individual or business entity listed above; or
☐ A news-gathering organization as defined in KRS 189.635(8)(b)1a. to e.

Signature: [REDACTED] Date: [REDACTED]